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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 230

ROBERT GRENE, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

## SUPPLEMENTAL MEMORANDUM FOR DEFENDANT ROBERT GRENE

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## SUPPLEMENTAL MEMORANDUM FOR DEFENDANT ROBERT GRENE

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This supplemental memorandum is filed as an aftermath to the Court's request of October 8, 1965, in which the representatives of the United States Government were asked the following questions:

1. What evidence in the record, if any, refutes the contention that any or all of the petitioners were convicted of one or more substantive offenses committed by co-conspirators before petitioners joined the conspiracy or after they severed their connections with the fraudulent enterprise; and

2. Assuming the record sustains the contention, what legal justification exists for such liability.

On November 22, 1965, the defendant was directed to file a reply or replies to the further response filed by the Solicitor General.

**IN RE PERSONS WITHDRAWING FROM A CONSPIRACY**

The defendant Grene agrees with the Government's position, ". . . one cannot commit a crime by ratifying, after the fact, the criminal act of the principal offender."

The defendant Grene violently disagrees with the Government's contentions that he can be convicted under the theory of the *Hyde* case for the acts of Levine (Counts 2 and 9).

To do so, the defendant contends, will violate two principles:

1. The unquestioned rule that penal statutes are to be strictly construed against the State and in favor of the accused. *Gesell* v. *U. S.* (C.C.A.) 1 F. 2d 283.

2. The rights granted the accused by the Constitution of the United States in the Fifth Amendment that, ". . . nor shall be compelled in any criminal case to be a witness against himself . . ."

**Argument in Re Point 1**

Title 18, Section 371, United States Code Annotated makes a "conspiracy" a statutory crime. It does not state that any affirmative act of withdrawal is necessary. It thus does not apprise a defendant of his potential liability. It does not set up standards defining an affirmative act of withdrawal and, for this reason alone, the judge in the trial court should have directed a judgment of acquittal on Counts 2 and 9. To hold otherwise would mean that, after a sale to a disinterested third party of a corporate vehicle, such as C.F.C., a former associate would have to anticipate that a purchaser, over whom he has no control, will operate such corporate vehicle in a fraudulent manner. This puts a defendant in an impossible position.

Suppose the purchaser operates the company correctly for three years and subsequently commits a fraudulent act, can a defendant be convicted after this period of time?

The petitioner respectfully urges this Court to answer in the negative.

The petitioner has searched the record in vain and can find no evidence that Grene ever knew Levine or, much less, that he had anything to do with the company after the sale in July, 1960.

**Argument in Re Point 2**

The requirement that an affirmative act of withdrawal be made goes to the discussion that once again Title 371 does not set up guidelines or standards as to what will qualify as an affirmative act of withdrawal.

Does a defendant have to go to the United States Government saying that he has been engaged in a

fraudulent enterprise, but that he is no longer associated with it and thus, in effect, in order to avoid the responsibility for substantive acts occurring after a sale of the corporate vehicle, he is being disrobed of his rights granted him by the Fifth Amendment, by having to confess to previous crimes in order to avoid prosecution for subsequent ones?

Stated another way, the Government concedes that, "... one cannot commit a crime by ratifying, after the fact, the criminal act of the principal offender." We are urging the Court, in this case, that a defendant cannot be held liable for a crime unless there is definite evidence showing that he could reasonably anticipate that a third party would use his same modus operandi after the sale of a corporate vehicle to perpetuate additional frauds on other parties.

**IN RE PERSONS JOINING A CONSPIRACY AFTER ITS INCEPTION**

The Government has already agreed that the defendant Grene could not be convicted of substantive offenses that were committed prior to the time that he allegedly joined the conspiracy.

In this matter, the Government suggested that the petitions be granted and that the judgment of the Court of Appeals be modified by directing a remand of the cases with directions to vacate the convictions and sentences of petitioner Grene on Counts 1 and 7.

We respectfully request that this Court go further and feel that there is no question but that Counts 3, 6 and 8 be accorded similar treatment.

The Government states on page 8(a) of its memorandum that, "The evidence shows active participation in the conspiracy by petitioner Grene beginning some

time 'prior to' February 1960." The Government refers this Honorable Court to page 3276 of the record, in order to substantiate their position.

The Government, however, fails to call to the attention of the Court the cross-examination of the Government's witness Haskoe on pages 3290 and 3291, wherein the witness explains that he had known Mr. Grene by virtue of previous negotiations but, in response to the following question:

> "Q. Did those negotiations have any bearing or relationship either to the Credit Finance or the Credit Realty?"
>
> "A. No. No, not whatsoever."

Additionally, on page 3292, the same Government witness, in answer to a question, responded, "So far as I know the only people I was dealing with was Mr. Glaser and Mr. Gradsky."

Thus, there is no evidence whatsoever that should have been submitted to a jury as to Grene's participation, if any, as to Counts 3, 6 and 8.

The previously-mentioned excerpts from the Government witness Haskoe also explained Grene's acting as a witness on March 20, 1960.

What is not present in the record and which is one of the bases for all the defendant's appeals is the non-availability of the books and records of Security Guaranty. These records would clearly substantiate the position of the defendant Grene that he joined the conspiracy, if any, after April, 1960. Prior to that time, he had no relation to the defendant Norman Gradsky. His only relationship occurred when Security Guaranty purchased all of the assets of

C.F.C. in exchange for the majority of the stock of Security Guaranty.

## CONCLUSION

For the reasons stated, we submit that the petition of defendant Grene should be granted, and we strongly urge that the judgment of the Court of Appeals be modified with directions to vacate the convictions and sentences of petitioner Grene on Counts 1, 2, 3, 6, 7, 8 and 9, it being understood, however, that our request stated herein is confined only to answering the Court's request and it does not waive the petitioner Grene's rights, if any, for reversal based upon the other Counts stated in his original petition.

Respectfully submitted,

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FEB 8 1966
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

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## No. 234

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NORMAN GRADSKY,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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## SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER, NORMAN GRADSKY

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IN THE

# Supreme Court of the United States

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## SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER, NORMAN GRADSKY

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In response to the Supplemental Memorandum filed for the United States by the Solicitor General, the petitioner, *Norman Gradsky*, would show that the Solicitor General concedes in his original brief that the petitioner resigned as President of *Credit Finance Corporation* in April, 1960, but, alternatively, takes the position that *Robert Grene* served thereafter as a representative of the petitioner until the sale of *Credit Finance Corporation* to *George Levine in July, 1960. (Solicitor General's Original* Brief, Page Six) In the Supplemental Brief of the Solicitor General, however, the Solicitor General in part relies upon the testimony of an officer of the *Securities Exchange Commission*, who testified about his examination of records of *Security Guaranty Company*, which were not in evidence and which during the trial were secreted in the

trunk of an automobile of a Postal Inspector and thereafter made unavailable to the petitioner and the other defendants. (R 3633 and 3634, 3782 through 3787, 3900 and 3901, 4052 through 4055)

The Solicitor General further relies upon the direct examination of a representative of the *Orlando Sentinel* that the petitioner was present at a discussion in August, 1960, concerning advertising for *Credit Finance Corporation.* (Supplemental Memorandum for the United States, Page Six) On cross-examination, however, it was adequately shown that the witness had no independent recollection of the people who were present at this one meeting, and that in fact he had taken the names of the original principals of *Credit Finance Corporation* out of his file and assumed for the purpose of his testimony that these were the people attending the conference. (R 2554 and 2555)

It is abundantly clear that the substantive offenses subsequent to April, 1960, occurred at times after which the petitioner had no longer been active with the company, and, accordingly, should fall.

By taking the foregoing position, the petitioner does not abandon the arguments set forth in the original Petition for Writ of Certiorari.

## CONCLUSION

For the reasons stated herein and in the original petition, it is respectfully submitted that the Petition for Writ of Certiorari be granted.

SIDNEY M. DUBBIN
*Attorney for Petitioner*

E. DAVID ROSEN
*Of Counsel*

I hereby certify that a true copy of the foregoing Supplemental Memorandum for the Petitioner, *Norman Gradsky*, was airmailed to the Solicitor General of the United States, Department of Justice, Washington, D. C.

E. DAVID ROSEN

END